

## Message Text

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ACTION EA-14

INFO OCT-01 ISO-00 DPW-01 IO-13 AID-20 OMB-01 DRC-01

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RSC-01 PRS-01 SPC-03 SS-15 USIA-15 ACDA-19 /141 W

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R 180740Z SEP 73

FM AMEMBASSY TOKYO

TO SECSTATE WASHDC 6838

INFO AMCONSUL SAPPORO

AMCONSUL FUKUOKA

AMCONSUL NAHA

AMCONSUL OSAKA KOBE

SECDEF WASHDC

COMUSJAPAN FUCHU JA

CINCPAC HONOLULU HI

C O N F I D E N T I A L SECTION 1 OF 2 TOKYO 12044

CINCPAC FOR POLAD

E.O. 11652: GDS

TAGS: PINT JA

SUBJECT: NAGANUMA COURT CASE DECISION ON SDF CONSTITUTIONALITY

REFS: (A) SAPPORO 0040

(B) TOKYO 11508

SUMMARY: SAPPORO DISTRICT COURT DECISION IN NAGANUMA CASE FINDING SDF UNCONSTITUTIONAL CAME AS NO SURPRISE TO GOJ AND INFORMED PBULIC WHICH HAD LONG ANTICIPATED OUTCOME. OPPOSITION GROUPS PREDICTABLY HAVE SOUGHT TO EXPLOIT COURT RULING TO PROMOTE ANTI-SDF ACTIVITIES AND IMPEDE DIET DELIBERATION ON DEFENSE BILLS. MEDIA COVERAGE, WHILE SUBSTANTIAL, HAS BEEN LOW KEY. ALTHOUGH MOST OBSERVERS EXPECT SOME ADVERSE IMPACT ON SDF MORALE AND RECRUITMENT, MANY ARGUE THAT, WITH QUESTION OF SDF CONSTITUTIONALITY NOW IN COURTS, SDF WILL BENEFIT SINCE AMBIGUITY CONCERNING SDF STATUS WILL BE CLEARED UP. END SUMMARY.

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1. SEPTEMBER 7 RULING BY SAPPORO DISTRICT COURT ON CONSTITUTIONALITY OF JSDF (REF B) CAME AS NO GREAT SURPRISE TO GOJ OR TO INFORMED PUBLIC, SINCE OUTCOME HAD BEEN ANTICIPATED LONG IN ADVANCE. POLITICAL NATURE OF CASE WAS APPARENT FROM OUTSET WHEN AGRICULTURE-FORESTRY MINISTRY DECISION IN 1969 TO REVOKE QTE FOREST RESERVE UNQTE DESIGNATION ON 35 HECTARES OF LAND IN ORDER TO PERMIT CONSTRUCTION OF ASDF MISSILE SITE IN NAGANUMA LED LOCAL RESIDENTS, WITH REFORMIST BACKING, TO CHALLENGE DECISION ON VARIOUS GROUNDS, INCLUDING ASSERTION THAT SDF UNCONSTITUTIONAL. AS LITIGATION PROCEEDED, STATEMENTS AND ACTIONS OF SAPPORO DISTRICT COURT JUDGE SHIGEO FUKUSHIMA IN HANDLING ASPECTS OF CASE LED MOST OBSERVERS TO PREDICT THAT HE WOULD ULTIMATELY FIND IN FAVOR OF PLAINTIFFS AND SUPPORT THEIR CONTENTION THAT SDF WAS UNCONSTITUTIONAL. THIS VIEW WAS REINFORMED BY FACT THAT FUKUSHIMA HELD MEMBERSHIP IN LEFTIST YOUNG LAWYERS ASSOCIATION (SEIHODAN).

2. IN IMMEDIATE PUBLIC STATEMENTS ON NAGANUMA DECISION, GOJ AND LDP STRONGLY DENOUNCED AND DEPLORED COURT ACTION. DESCRIBING JUDGMENT AS QTE REGRETTABLE UNQTE, CHIEF CABINET SECRETARY NIKAIDO IN SEPTEMBER 7 STATEMENT ANNOUNCED THAT GOVERNMENT WOULD APPEAL AND SAID GOJ HAD NO INTENTION TO ALTER SDF OPERATIONS OR PLANS. LDP SEC GEN HASHIMOTO DENIGRATED DECISION AS ONE MADE BY LEFT-LEANING LOCAL JUDGE, AND ASSERTED THAT QTE SDF DEEPLY ENTRENCHED IN HEARTS OF JAPANESE PEOPLE. EVERY JAPANESE UNDERSTANDS JAPAN HAS RIGHT TO SELF-RELIANT DEFENSE UNQTE. HE ADDED THAT DECISION SHOULD BE CORRECTED IN HIGHER COURT. OTHER GOJ LEADERS, E.G. JUSTICE MINISTER ISAJI TANAKA AND JDA CHIEF SADANORI YAMANAKA MADE SIMILAR REMARKS. ON SEPTEMBER 12, GOJ FORMALLY APPEALED CASE TO SAPPORO HIGH COURT. JUSTICE MINISTER AND OTHER GOVERNMENT LEADERS HAD HOPED TO TAKE CASE DIRECTLY TO SUPREME COURT. HOWEVER, REQUISITE CONCURRENCE BY PLAINTIFFS WAS NOT FORTHCOMING BECAUSE OF TACTICAL DECISION TO STRETCH OUT LITIGATION. DECISION WAS THEN TAKEN TO MOVE THROUGH REGULAR APPELLATE CHANNEL.

3. OPPOSITION PARTIES AND MOST COMMENTATORS VOICED APPROVAL OF DECISION. ARGUMENTS BY LATTER WERE LARGELY BASED ON STRICT AND LITERAL READING OF CONSTITUTIONAL LANGUAGE, WHILE ATTITUDE OF OPPOSITION PARTIES WAS PREDICTABLY POLITICAL. ARGUING THAT CONFIDENTIAL

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SDF LEGITIMACY AND GOJ AND LDP DEFENSE POLICY HAD BEEN COMPLETELY NEGATED BY JUDGE FUKUSHIMA'S DECISION, JSP, JCP AND KOMEITO SPOKESMEN CALLED ON GOVERNMENT NOT TO APPEAL CASE, DROP TWIN DEFENSE BILLS, SCRAP DEFENSE BUILDUP PROGRAM AND ELIMINATE DEFENSE APPROPRIATIONS FROM BUDGET. JCP AND JSP ALSO DEMANDED DISSOLUTION AND DISBANDMENT OF SDF.

4. OPPOSITION PARTIES HAVE ALSO SOUGHT TO EXPLOIT NAGANUMA

DECISION TO REINFORCE THEIR ONGOING ANTI-SDF, ANTI-MST CAMPAIGNS. JSP QUICKLY ORGANIZED RALLY IN TOKYO SEPTEMBER 12 TO SUPPORT COURT RULING AND OPPOSE DEFENSE BILLS NOW IN DIET WITH, HOWEVER, INDIFFERENT RESULTS. JSP ALSO PLANS TO DISTRIBUTE HANDBILLS EXPLAINING QTE UNCONSTITUTIONALITY UNQTE OF SDF AND IS TALKING ABOUT COUNSELING CENTERS NEAR SDF BASES TO QTE HELP SDF MEMBERS FIND NEW JOBS. UNQTE PREPARATIONS WITH SOHYO AND OTHER REFORMIST ELEMENTS ARE UNDERWAY TO MOUNT CAMPAIGNS AGAINST OCTOBER 28 GSDF REVIEWS SCHEDULED IN TOKYO AND OTHER CITIES. IN ADDITION, VARIETY OF LOCAL ANTI-SDF ACTIVITIES SUCH AS RALLIES, REFUSAL TO AID RECRUITING, DENIAL OF USE OF MUNICIPAL PROPERTY AND DEMONSTRATIONS AGAINST SDF BASES AND FACILITIES ARE SLATED IN SCATTERED LOCATIONS DURING COMING WEEKS. SDF THEME WILL BE STRESSED IN DEMONSTRATIONS AGAINST USS MIDWAY AND ANTI-WAR DAY ACTIVITIES OCTOBER 21.

5. AS EXPECTED, OPPOSITION PARTIES WERE QUICK TO RAISE NAGANUMA RULING AS ISSUE IN DIET. JCP AND JSP IMMEDIATELY CALLED FOR SPECIAL PLENARY SESSIONS FOR EMERGENCY INTERPELLATIONS AND DEMANDED JOINT CABINET COMMITTEE SESSIONS OF UPPER AND LOWER HOUSE BE HELD TO DEBATE ENTIRE QUESTION OF DEFENSE. AT SAME TIME, SOCIALISTS AND COMMUNISTS THREATENED TO BOYCOTT CURRENT DIET DELIBERATIONS ON PENDING DEFENSE BILLS ON THE GROUNDS THAT THEY CANNOT PARTICIPATE IN DELIBERATION OF BILLS TO STRENGTHEN QTE UNCONSTITUTIONAL SDF UNQTE. KOMEITO, WHILE LESS VOCIFEROUS, FOLLOWED JSP-JCP LEAD. GOJ LEADERSHIP HAS REJECTED DEMANDS FOR SPECIAL SESSIONS AND HAS MAINTAINED STRONG STANCE ON ISSUE IN REPLYING TO QUESTIONS RAISED IN COURSE OF REGULAR DIET DEBATE. IN UPPER HOUSE CABINET COMMITTEE MEETING SEPTEMBER 13, JDA DIRECTOR GENERAL YAMANAKA AND JUSTICE MINISTER TANAKA VOICED SPIRITED DEFENSE OF SDF AND COUNTRY'S RIGHT OF SELF-DEFENSE IN RESPONSE TO INTERPELLATION AND WELCOMED PUBLIC CONTROVERSY ON SDF

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CONSTITUTIONALITY AS DEVELOPMENT WHICH WOULD CONTRIBUTE TO FUTURE DEVELOPMENT OF NATIONAL CONSENSUS ON ISSUE CONSTITUTIONALITY OF SDF WAS ALSO STRONGLY REAFFIRMED BY PRIMIN TANAKA BEFORE SAME COMMITTEE SEPT 17.

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R 180740Z SEP 73

FM AMEMBASSY TOKYO

TO SECSTATE WASHDC 6839

INFO AMCONSUL SAPPORO

AMCONSUL FUKUOKA

AMCONSUL NAHA

AMCONSUL OSAKA KOBE

SECDEF WASHDC

COMUSJAPAN FUCHU JA

CINCPAC HONOLULU HI

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6. PRESS, TV AND RADIO GAVE INITIAL HEAVY PLAY TO NAGANUMA RULING. DAY DECISION ANNOUNCED, FOUR TV CHANNELS PROVIDED LIVE COVERAGE FROM COURTHOUSE SITE AND PAPERS ANNOUNCED COURT RULING WITH BANNER HEADLINES. FOLLOW-UP COVERAGE HAS BEEN CONSIDERABLE (ALTHOUGH SOMEWHAT OVER-SHADOWED BY COVERAGE OF KIM TAE CHUNG CASE), WITH COPIOUS COMMENTARY BY EXPERTS COVERING ALL ASPECTS OF ISSUE. MEDIA ALSO FOCUSSED ON FOREIGN REACTION TO RULING. ASAHI'S WASHINGTON CORRESPONDENT REPORTED THAT UNOFFICIAL US VIEW WAS THAT DECISION WOULD BE REVERSED ON APPEAL, ALTHOUGH OFFICIALS WERE CAUTIOUS IN DISCUSSING JAPANESE DOMESTIC PROBLEM AND AWARE IT WAS DELICATE POLITICAL QUESTION. ASAHI ALSO SAID SOME US QTE EXPERTS UNQTE FELT DECISION COULD HAVE IMPACT ON MST, BUT HOPED THERE WOULD BE NO ADVERSE EFFECT ON SUCH MATTERS AS ASSUMPTION OF SDF FUNCTIONS IN OKINAWA AND PLANS FOR US BASE CONSOLIDATION. RELATED ARTICLES SAID MOSCOW REPORTED DECISION WITHOUT COMMENT IN APPARENT REFERENCE TO PRIMIN TANAKA'S PENDING VISIT, BUT THAT OBVIOUSLY SOVIETS WELCOMED RULING. BANGKOK REPORT SAID ASEAN NATIONS, WHILE HARBORING SOME FEAR OF JAPANESE MILITARY EXPANSION, AT CONFIDENTIAL

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SAME TIME FEEL JAPANESE CONSERVATIVE FOREIGN POLICY (WITH SOME MILITARY STRENGTH) IS IMPORTANT SOURCE OF SUPPORT IN DEALING WITH CHINA. EDITORIAL COMMENT HAS BEEN RELATIVELY LIGHT, MUCH OF IT DEVOTED TO REHASING HISTORICAL DEBATE OVER ARTICLE 9. MOST EDITORIAL WRITERS TENDED TO AGREE THAT WHEN ISSUE IS OF SUCH

MAGNITUDE REAL DECISION IS WITH SUPREME COURT AND UNDUE WEIGHT SHOULD NOT BE GIVEN TO HOKKAIDO RULING OR TO PURELY LEGALISTIC ARGUMENT. AT SAME TIME, THEY CAUTIONED THAT GOJ AND LDP SHOULD NOT UNDERESTIMATE ITS IMPORTANCE AND SHOULD REALIZE NEED TO WORK TOWARD ACHIEVING NATIONAL CONSENSUS ON DEFENSE ISSUE.

7. JDA AND SDF RESPONSE TO COURT DECISION HAS BEEN TO MAINTAIN BUSINESS-AS-USUAL ATTITUDE. PUBLIC STATEMENTS OF DEFENSE OFFICIALS HAVE BEEN CALM AND CORRECT. SOME HAVE REPORTEDLY WELCOMED DECISION ON PREMISE IT WILL LEADE TO INCREASED AWARENESS OF NEED FOR CONSTITUTIONAL REVISION. SOME OBSERVERS BELIEVE HOWEVER, THAT, AS RESULT OF RULING, JDA AND SDF OFFICIALS ARE WORRIED ABOUT: (A) UPSWING IN ANTI-BASE ACTIVITIES, (B) RECRUITING DIFFICULTIES, (C) INCREASED RESIGNATIONS, AND (D) DECLINE IN MORALE. SOME CREDENCE TO EXISTENCE OF SUCH CONCERN PROVIDED BY FACT JDA DIRECTOR YAMANAKA FELT NECESSITY OF SEPTEMBER 7 RADIO BROADCAST TO SDF ASSURING THEM THAT FORCES ARE CONSTITUTIONAL AND CALLING ON THEM NOT TO QTE WAVER UNQTE.

8. COMMENT: QUESTION OF SDF STATUS HAS BEEN EXAMINED EXHAUSTIVELY FROM ALL ANGLES OVER LAST 20 YERS AND JAPANESE PUBLIC IS GENERALLY FAMILIAR WITH ARGUMENTS INVOLVED. WHAT IS NEW IS THAT ISSUE IS NOW IN COURTS WITH SOME KIND OF LEGAL CLARIFICATION IN OFFING. MOST OBSERVERS BELIEVE THAT ULTIMATE DECISION WILL POSITIVELY AFFIRM CONSTITUTIONALITY OF SDF, THUS REMOVING AMBIGUITY SURROUNDING SDF STATUS WHICH HAS CONSTANTLY HAMPERED GOJ EFFORTS TO DEVELOP DEFENSE CAPABILITY.

9. ALTHOUGH LEFTIST FORCES HAVE LONG SOUGHT COURT RULING ON SDF, DECISION ITSELF IS NOT UNMIXED BLESSING FOR THEM. IN LONG RUN, THEY FACE PROSPECT THAT SUPREME COURT WILL AFFIRM SDF CONSTITUTIONALITY AND STRIP THEM OF THIS ISSUE. MORE IMMEDIATELY, AS THEY PREPARE FOR 1974 UPPER HOUSE ELECTION, FOCUS ON THIS ISSUE UNDERSCORES LACK OF AGREEMENT AMONG REFORMIST PARTIES ON DEFENSE ISSUE. JSP NOTIONS OF UNARMED NEUTRALITY, JCP ASSERTIONS CONFIDENTIAL

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ON RIGHT OF ARMED DEFENSE (NOT SDN) AFTER BREAKING TIES WITH US, KOMEITO STATMENTS SUPPORTING MINIMAL DEFENSE CAPABILITIES, AND DSP SUPPORT FOR LIMITED SDF ARE CLEARLY INCOMPATIBLE.

10. HOW LONG APPELLATE PROCESS WILL REQUIRE AND EXTENT REFORMISTS WILL BE ABLE TO PARLAY ATTENDANT TESTIMONY AND CONTROVERSY INTO POLITICAL GAINS TO DIFFICULT TO ESTIMATE. OUR TENTATIVE IMPRESSION IS THAT, DESPITE SHORT-TERM BOOST FOR OPPOSITION-SPONSORED ANTI-SDF EFFORTS, NAGANUMA CASE PER SE WILL NOT HAVE SERIOUSLY ADVERSE EFFECT ON GOJ POLITICALLY. DECISION WAS EXPECTED, GOJ IS ON TOP OF SITUATION, AND SDF FUNCTIONING IS NOT LIKELY TO BE SERIOUSLY AFFECTED.

11. HOWEVER, AS RESULT OF CASE, GOJ NOW CONFRONTED WITH  
NEW OBSTACLE TO PASSAGE OF TWO DEFENSE BILLS NOW PENDING IN  
DIET. GOJ APPEARS TO HAVE HOBSON'S CHOICE OF ALLOWING BILLS TO  
LANGUISH AT LEAST UNTIL NEXT DIET SESSION OR FORCING THROUGH  
PASSAGE BY EXERCISING LDP MAJORITY VOTE. EFFECT OF FORMER WOULD  
BE TO CONTINUE EXISTING STRAIN ON JSDF RESOURCES CAUSED BY TAKING  
OVER OKINAWA DEFENSE WITHOUT INCREASE IN MANPOWER AUTHORIZATION  
AND WITHOUT DESIRABLE REORGANIZATION, THUS ADDING TO JSDF MORALE  
PROBLEMS. EFFECT OF LATTER COURSE WOULD BE TO INVITE FURTHER  
TURMOIL IN DIET, FUEL OPPOSITION CRITICISMS OF GOJ HANDLING  
OF DEFENSE MATTERS, AND POSSIBLY INCREASE INTENSITY  
OF DEMONSTRATIONS AGAINST MIDWAY VISIT AS MEANS OF DRAMATIZING  
OPPOSITION TO LDP SECURITY POLICIES.  
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## Message Attributes

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